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No. 09-129

Supreme Court, U.S.
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In The Supreme Court of the United States

AMERICAN CRYSTAL SUGAR COMPANY,

Petitioner,

v.

THE AMALGAMATED SUGAR COMPANY LLC,

and

THOMAS VILSACK, UNITED STATES DEPARTMENT OF AGRICULTURE,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION OF THE AMALGAMATED SUGAR COMPANY LLC

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COUNTER STATEMENT OF QUESTIONS PRESENTED

Whether the court of appeals correctly concluded that the terms "processor" and "permanently terminated operations" in 7 U.S.C. §§ 1359dd(b)(2)(E)-(F) were not ambiguous and that the agency was therefore not entitled to *Chevron* deference.

Whether the court of appeals correctly concluded that an agency's interpretation of statutory terms that is inconsistent with the agency's own regulatory definition of those terms is not reasonable and not entitled to deference.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of this Court, Respondent The Amalgamated Sugar Company LLC states that it is a Delaware limited liability company. The Snake River Sugar Company, an Oregon agricultural cooperative, and ASC Holdings, Inc., a Utah corporation, are the member owners of The Amalgamated Sugar Company LLC. There is no publicly held company that owns 10 percent or more of the membership interests of The Amalgamated Sugar Company LLC.

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BRIEF IN OPPOSITION

OPINIONS BELOW

The opinion of the Ninth Circuit Court of Appeals is reported at 555 F.3d 816 (9th Cir. 2009) and is reprinted in the Appendix to the Petition ("Pet. App.") at 30. A petition for panel rehearing was denied and an amended opinion substituted by order dated April 6, 2009. The amended opinion is reported at 563 F.3d 822 (9th Cir. 2009) and is reprinted at Pet. App. 1.

The opinion of the District Court is reprinted at **No. 06-167**, 2007 WL 2612675 (D. Idaho Sept. 6, 2007) and at Pet. App. 56.

The decision of the Judicial Officer of the U.S. Department of Agriculture is reprinted at Pet. App. 69.

The decision of the Administrative Law Judge of the U.S. Department of Agriculture is reprinted at Pet. App. 100.

JURISDICTION

The judgment of the Ninth Circuit Court of Appeals was entered on February 11, 2009. A petition for rehearing en banc was denied April 28, 2009. The petition for writ of certiorari was filed on July 27, 2009. The jurisdiction of this Court was invoked by Petitioner under 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Section 359d(b)(2)(E) of the Agricultural Adjustment Act of 1938, *as amended*, 7 U.S.C. § 1359dd(b)(2)(E).

"(E) Permanent termination of operations of a processor

If a processor of beet sugar has been dissolved, liquidated in a bankruptcy proceeding, or otherwise has permanently terminated operations (other than in conjunction with a sale or other disposition of the processor or the assets of the processor), the Secretary shall –

***(i)** eliminate the allocation of the processor provided under this section; and*

***(ii)** distribute the allocation to other beet sugar processors on a pro rata basis. . . ."*

Section 359d(b)(2)(F) of the Agricultural Adjustment Act of 1938, *as amended*, 7 U.S.C. § 1359dd(b)(2)(F).

"(F) Sale of all assets of a processor to another processor

If a processor of beet sugar (or all of the assets of the processor) is sold to another processor of beet sugar, the Secretary shall transfer the allocation of the seller to the buyer unless the allocation has been distributed to other sugar beet processors under subparagraph (E)."

7 C.F.R. § 1435.2.

The definitions set forth in this section are applicable for all purposes of program administration. Terms defined in part 718 of this title are also applicable.

"Sugar beet processor means a person who commercially produces sugar, directly or indirectly, from sugar beets (including sugar produced from sugar beet molasses), has a viable processing facility, and a supply of sugar beets for the applicable allotment year.

[67 FR 54928, Aug. 26, 2002, as amended at 69 FR 55062, Sept. 13, 2004]"

INTRODUCTION

The petition for certiorari satisfies none of the criteria applicable for review by this Court. American Crystal Sugar Company ("Petitioner") mischaracterizes the holding of the Ninth Circuit Court of Appeals in this case, and the holding of this Court in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). The case before this Court involves the interpretation of two subparagraphs of the Agricultural Adjustment Act (the "Act"), 7 U.S.C. § 1359dd(b)(2)(E) and 7 U.S.C. § 1359dd(b)(2)(F), as amended by Congress when it enacted the Farm Security and Rural Investment Act of 2002 (the "Farm Bill"). This is a case of first impression, and these provisions, when reviewed by the Ninth Circuit, were reviewed by a court of appeals for the first time.

Thus, there is no conflict among circuits in the interpretation of these statutory provisions that would require review by this Court.

Petitioner incorrectly asserts that the holding of the Ninth Circuit Court of Appeals in this case is in conflict with a prior decision of the Court of Appeals for the District of Columbia Circuit. Pet. App. 13. Petitioner's argument is based on a mischaracterization of the central holdings in this case.

The holdings of the Ninth Circuit in this case are that (1) the terms "processor" and "permanently terminated operations" in 7 U.S.C. §§ 1359dd(b)(2)(E) and (F) were unambiguous; and (2) the U.S. Department of Agriculture's (the "USDA") interpretation of those terms conflicted with the natural and ordinary meaning of those same terms as well as the USDA's own regulatory definition of them, and was, therefore, not entitled to *Chevron* deference because such interpretation was not reasonable. Pet. App. 21-22. Petitioner's contention that the Ninth Circuit allegedly announced a new "self-interest" rule that undercuts *Chevron*, Pet. App. 13-15, focuses on comments of the Ninth Circuit that were not central to its holding in this case, and, in any event, Petitioner misstates the basic holding in *Chevron*.

The Ninth Circuit's decision in this case is consistent with the decisions of both this Court and the circuit courts of appeals subsequent to *Chevron*. The petition should be denied.

STATEMENT

I. The Applicable Statutory Background.

A. The Act Establishes a Marketing Allocation System for Sugar Producers.

In 2002, Congress enacted the Flexible Marketing Allotments for Sugar ("FMAS") program (as part of the Farm Bill), which amended the Act to stabilize prices for domestically produced sugar. 7 U.S.C. § 1359aa, *et seq.* The Secretary of Agriculture (the "Secretary") was directed to establish domestic marketing allocations for cane sugar producers and beet sugar processors. The amount of sugar that any company can sell domestically now depends entirely on the size of its marketing allocation. Initial allocations were made to sugar beet processors based on historical production levels during the 1998-2000 crop years.

B. The Statute Requires That When a Processor Permanently Terminates Its Operations, Its Marketing Allocation Be Redistributed Pro Rata.

The statute requires the Secretary to eliminate a processor's allocation and to redistribute that allocation to all other processors if the processor is dissolved, liquidated or "otherwise has permanently terminated operations." 7 U.S.C. § 1359dd(b)(2)(E). The companion provision authorizes the Secretary to transfer the allocation to another sugar beet processor, but only if a "processor of beet sugar (or all of

the assets of the processor)" is sold to another processor of beet sugar.[1] 7 U.S.C. § 1359dd(b)(2)(F).

The USDA subsequently promulgated implementing regulations that defined the term "sugar beet processor" as an entity that (1) is commercially producing sugar from sugar beets, (2) has a viable processing facility and (3) has a supply of sugar beets for the applicable allotment year. 7 C.F.R. § 1435.2.

II. Factual Background.

Petitioner's Brief contains statements and factual allegations that were never accepted by the USDA Administrative Law Judge (the "ALJ"), the District Court or the Ninth Circuit, and that inaccurately present the factual findings in this case. The Amalgamated Sugar Company LLC ("Respondent") respectfully submits it is improper for Petitioner to ignore the findings of fact that have been made by the courts below and to attempt to "rewrite" the facts in this case to those that it prefers. Respondent asserts that the Statement of Factual and Procedural History in the opinion of the Ninth Circuit is an accurate, correct statement of the findings in this case and is fully supported by the record. *See* Pet. App. 5-11. The ALJ also presented a

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[1] The statutory subsections at issue use the terms "processor of beet sugar," "beet sugar processor" and "beet processor" interchangeably.

complete version of the findings of fact. Pet. App. 105-124. In summary, the key facts are as follows:

Pacific Northwest Sugar Company ("Pacific") operated a single plant in Moses Lake, Washington, and had received a beet sugar marketing allocation. Pet. App. 5. Pacific experienced significant financial problems and in January 2001, it shut down the plant and terminated processing operations. Pet. App. 5. Pacific had no sugar beet crop in 2002 or 2003 and never resumed operations. It terminated most of its employees. Pet. App. 5. In June 2001, Pacific sold its plant and equipment to Central Leasing, who owned the plant site and to whom Pacific was in substantial arrears on lease payments. Pet. App. 5. In July 2001, Pacific was administratively dissolved by the State of Washington. Pacific defaulted on a $20 million USDA guaranteed loan, resulting in a $12.1 million loss to the government. Pet. App. 7-8.

In October 2002, the USDA announced an allocation for Pacific in the succeeding crop years. Pet. App. 7. However, because Pacific was not operational and could not use the allocation, the USDA reallocated Pacific's share to other processors, much of it immediately at the beginning of the crop year. Pet. App. 7. On December 3, 2002, Pacific conveyed all interests in its marketing allocation and its production history to a new company called Washington Sugar Company ("WSC"), owned by Scott Lybbert. Pet. App. 8. Six months later, even though Pacific had conveyed its "interests" to WSC, and although Pacific had not used any of its 2002

allocation, a representative of Pacific attempted, at a USDA hearing in June 2003, to get Pacific's allocation increased. Pet. App. 8. The request was opposed by other processors, including Petitioner, and the USDA denied the request. Pet. App. 8.

In July 2003, Petitioner began negotiating to obtain the Pacific allocation. Pet. App. 8. Petitioner told the USDA that it was

> contemplating a transaction which would effectively result in the allocation, currently owned by [Pacific] being transferred to [American Crystal]. As currently contemplated, substantially all of the assets of [Pacific] would be transferred to an intermediary company [Washington Sugar]. Since [Pacific] has already transferred ownership of its former processing facility to another party [(Central Leasing LLC)], substantially all of the assets of Pacific consists [sic] mainly of the marketing allocation and some other generally immaterial assets. The next step in the transaction would be the immediate transfer of all of the assets of [Washington Sugar] to American Crystal. The effect of the transaction would be to move the sugar marketing allocation from [Pacific], through [Washington Sugar] to [American Crystal].

Pet. App. 9.

On July 30, 2003, Petitioner told the USDA's Commodity Credit Corporation (the "CCC") – a part of the USDA – that it was acquiring "ownership or

control of the assets (including the rights to the production history and the marketing allocations), associated with the Moses Lake, Washington sugar beet processing factory." Pet. App. 9. Petitioner told the USDA that it had no intentions of ever processing sugar at the old Pacific facility, which had not been in operation for two-and-a-half years. Pet. App. 8. Apparently realizing that WSC had never been given an allocation, the USDA replied, suggesting that Pacific be resurrected for the purposes of what the ALJ would later call a "sham transaction contrary to the objectives of the Act." Pet. App. 141. On August 28, 2003, the USDA told Petitioner: "We understand that American Crystal is purchasing all of the assets of Pacific Northwest, securing the rights to make sugar at the Pacific Northwest/Central Leasing factory site, and purchasing some of the sugar making equipment used by Pacific." Pet. App. 9-10. The USDA also required that the parties seeking the transfer drop appeals of certain administrative claims they had pending against the USDA. Pet. App. 10.

On September 8, 2003, Pacific, which had been out of business for two-and-a-half years, was hurriedly reinstated as a legal corporation with the State of Washington. Pet. App. 10. WSC executed a "revocation" of Pacific's previous transfer of rights to it, Petitioner purported to purchase Pacific's assets (which were nothing more than the company's production history and alleged "right" to an allocation) and the papers were sent to the USDA. Pet. App. 10. On September 16, 2003, the USDA informed

Petitioner that it had approved the alleged "sale" and that it would transfer Pacific's allocation to Petitioner beginning with the 2003 crop year. Pet. App. 11.

On December 4, 2003, Respondent filed a Petition for Review, administratively challenging the transfer. Pet. App. 11.

III. Proceedings Below

On February 7, 2005, the ALJ determined that Pacific had not been an operating company at the time of the transfer, and that the USDA had neglected, despite having clear evidence to the contrary, to determine that Pacific had terminated its operations, to eliminate Pacific's allocation and to redistribute the allocation as the law requires. Pet. App. 129, 137, 140-142. The ALJ rejected the USDA's claim that there had been a sale that justified its transfer decision and noted that by not taking the steps necessary to make the determination, the CCC had encouraged what appeared to be "a sham transaction" contrary to the objectives of the Act. Pet. App. 141. The ALJ held that the USDA's decision was arbitrary, capricious, an abuse of discretion, unsupported by evidence and contrary to the law. Pet. App. 141.

On February 28, 2005, the USDA appealed to the USDA's Judicial Officer who, without hearing oral argument, reversed the ALJ and ordered the USDA's transfer of the allocation reinstated. Pet. App. 72. The Judicial Officer specifically found that Pacific's sugar

beet processing operations had ceased in February of 2001 and had never resumed. Pet. App. 81. However, interpreting the term "processor of beet sugar" in 7 U.S.C. § 1359dd(b)(2)(F) to mean any entity with a marketing allocation, the Judicial Officer concluded that since the USDA had not, prior to September 2003, removed Pacific's marketing allocation, it remained a "processor of beet sugar." Pet. App. 83-84, 95-96. The Judicial Officer's decision did not mention or consider the USDA's implementing regulations, which contained a specific and contrary definition.

Respondent challenged the Judicial Officer's decision in the U.S. District Court for the District of Idaho. Pet. App. 56. The District Court entered summary judgment in favor of the USDA and Petitioner. Pet. App. 67-68. In its opinion, the District Court was troubled by the ALJ's determination that there was "no sale of the assets of the processor" in order to invoke a transfer of allocation under 7 U.S.C. § 1359dd(b)(2)(F) and by the Judicial Officer's ultimate conclusion that the sale had been "appropriate." Pet. App. 66-67. However, the District Court held that it was required to defer to the Judicial Officer's interpretation of the statute. Respondent then appealed to the Ninth Circuit Court of Appeals. Pet. App. 67.

The Ninth Circuit reversed the District Court after it concluded that the disputed provisions of the Act were unambiguous and that the District Court had erred in granting *Chevron* deference to the interpretation of the term "processor" advanced by

the USDA. Pet. App. 16-17. In explaining its reasoning, the Ninth Circuit held that a "processor" is an entity that processes sugar, as defined by the USDA's own regulations, and is entirely within the natural and ordinary meaning of the word. Pet. App. 21-22. The Ninth Circuit also found, based on the record, that Pacific had "permanently terminated operations" prior to and not in conjunction with the proposed sale of assets to Petitioner. Pet. App. 25. The Ninth Circuit, therefore, found that Pacific had not been a processor at the time USDA approved the transfer of Pacific's allocation to Petitioner. Pet. App. 16. On that basis, the Court concluded that the USDA had erred in approving the transfer of the allocation to Petitioner, and that the law required Pacific's sugar marketing allocation to be redistributed pro rata among all processors. Pet. App. 25.

The Ninth Circuit declined to rehear this case en banc.

REASONS FOR DENYING THE WRIT

The Ninth Circuit's essential holdings in this case are that the statutory term "processor" in 7 U.S.C. § 1359dd(b)(2)(E) is not ambiguous and has the normal and ordinary meaning of "one who processes," and because the term's meaning is not ambiguous, *Chevron* deference is inapplicable. Second, even if the term were ambiguous, USDA had already defined the term in its program regulations at 7

C.F.R. § 1435.2 and could not, therefore, interpret the term in a different and inconsistent manner in this case. Both of these central holdings are entirely consistent with this Court's holdings in *Chevron*. The Ninth Circuit did not "create a new test" based on an agency's self-interest, as Petitioner alleges. The Ninth Circuit's comments on the USDA's self-interest in this case create no new legal "test"; the Court noted, as a future caution to the USDA, that "*Chevron* deference may be inappropriate where, as here . . . the agency has a self-serving or pecuniary interest" but that cautionary statement is *dicta*, and is not the core holding in the case. Pet. App. 13. The Ninth Circuit's holdings are consistent with the settled precedent of this Court and the other circuit courts. There is, therefore, no circuit split on the legal questions presented by this case. For the above reasons this Court should deny certiorari.

I. The Ninth Circuit Correctly Held That the USDA Was Not Entitled to *Chevron* Deference.

The Ninth Circuit correctly held that because the statutory term "processor" was not ambiguous, the USDA's interpretation of that term was not entitled to any deference. Pet. App. 16-22. Petitioner incorrectly argues that the USDA's interpretation of the statutory term "processor" as an entity that had received a marketing allocation was "reasonable" and that *Chevron* required the Ninth Circuit to defer to

the USDA's interpretation of the statutory term. Pet. App. 21-23. But that is not the law.

A core teaching of this Court's decision in *Chevron* is that the first and most important step in construing a statute is to look to the statutory language itself. "If the intent of Congress is clear, that is the end of the matter; for the court as well as the agency must give effect to the unambiguously expressed intent of Congress." *Chevron*, 467 U.S. at 842-44. A reviewing court must, therefore, first look to the text of the statute to "determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case. Our inquiry must cease if the statutory language is unambiguous and the statutory scheme is coherent and consistent." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997) (*quoting United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 240 (1989)).

In reviewing agency statutory construction, there is a "strong presumption that the plain language of the statute expresses congressional intent, [and] is rebutted only in rare and exceptional circumstances, when a contrary legislative intent is clearly expressed." *Ardestani v. I.N.S.*, 502 U.S. 129, 135-36 (1991) (*quoting Rubin v. United States,* 449 U.S. 424, 430 (1981)); *see also I.N.S. v. Cardoza-Fonseca,* 480 U.S. 421, 432 (1987). Courts "start with the assumption that the legislative purpose is expressed by the ordinary meaning of the words used." *Richards v. United States*, 369 U.S. 1, 9 (1962), and that "[a]bsent a clearly expressed legislative intention to

the contrary, that language must ordinarily be regarded as conclusive." *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980).

The Ninth Circuit determined that Congress had not specifically defined the term "processor" in 7 U.S.C. § 1359dd(b)(2)(E), and that there was no evidence that the term was intended to have any special meaning different from what might ordinarily be understood. It concluded, as courts have traditionally concluded, that Congress meant the term to be interpreted in accordance with its plain and ordinary dictionary meaning. Pet. App. 18. The Court determined that the plain and ordinary meaning of the word "processor" is simply "one that processes." Pet. App. 18. This is entirely consistent with *Chevron*.

Chevron does not say that an agency's interpretation of a statute is always entitled to deference. Rather, *Chevron* stands for the proposition that when an agency defines a statutory term through the regulatory process, the definition in the agency's regulations is given controlling weight and is entitled to deference.

In *Chevron*, the issue before this Court was the meaning of the term "stationary source" in section 172(b)(6) of the Clean Air Act. Because Congress had not specifically defined that term, the Environmental Protection Agency (the "EPA") promulgated regulations that, *inter alia*, specifically defined "stationary source." Subsequently, the National Resources

Defense Council challenged the regulatory definition. This Court upheld the EPA, stating that "[i]f Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious and contrary to statute." *Chevron*, 467 U.S. at 843-44.

Applying *Chevron*'s teachings in this case, it follows that the USDA is entitled to deference only when it has interpreted the term "processor of sugar beets" in 7 U.S.C. § 1359dd(b)(2)(F) by regulation. The interpretation of the term "processor" that the USDA invented for the purposes of this case is not its regulatory definition, and in fact is plainly inconsistent with the definition of the term found in the USDA's own program regulations at 7 C.F.R. § 1435.2. Significantly, Petitioner makes no mention anywhere in its Brief of the USDA's program regulations.

Because the interpretation the USDA applied in this case was not developed "through the regulatory process," the USDA is entitled to no deference under *Chevron*. The USDA had previously defined "sugar beet processor" as "a person who commercially produces sugar, directly or indirectly, from sugar beets (including sugar produced from sugar beet molasses), has a viable processing facility, and a supply of sugar beets for the applicable allotment year." 7 C.F.R. § 1435.2. The USDA was not free to disregard its own

regulatory definitions. It is this Court's longstanding position that "it is incumbent upon agencies to follow their own procedures." *United States v. Caceres*, 440 U.S. 741, 752 (1979) (*quoting Morton v. Ruiz*, 415 U.S. 199, 235 (1974)). And as long as a regulation "is extant it has the force of law." *United States v. Nixon*, 418 U.S. 683, 695 (1974).

Where an agency is interpreting a statute it is charged to administer, the question is whether its interpretation is based on a permissible construction of the statute. This Court has held that an agency's interpretation of its own regulations is not entitled to deference if it is "plainly erroneous or inconsistent with the regulation." *Auer v. Robbins*, 519 U.S. 453, 461-63 (1997) (*quoting Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 359 (1989)). The "courts are the final authorities on issues of statutory construction" and "they must reject administrative constructions . . . that are inconsistent with the statutory mandate or that frustrate the policy that Congress sought to implement." *FEC v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 32 (1981). The Ninth Circuit was, therefore, correct in rejecting the USDA's inconsistent interpretation of its own regulations.

II. Petitioner Misrepresents Holdings of the Ninth Circuit and This Court.

A. The Ninth Circuit's Holding Does Not Conflict with the D.C. Circuit's Decisions.

Petitioner argues that the Ninth Circuit overreached by erecting a new rule, under which *Chevron* deference may be inappropriate, where "(1) the agency has a self-serving or pecuniary interest in advancing a particular interpretation of a statute, *and* (2) the construction advanced by the agency is arguably inconsistent with Congressional intent." Pet. App. 14. The dispositive words here are "may be inappropriate." This alleged "new rule" comes from the D.C. Circuit case *National Fuel Gas Supply v. Federal Energy Regulatory Commission*, 811 F.2d 1563, 1571 (D.C. Cir. 1987), and was cited by the Ninth Circuit as part of its discussion concerning the possible motivations behind the USDA's anomalous failure to abide by its own implementing regulations. Nowhere in the Ninth Circuit's opinion, however, is the *National Fuel Gas* standard cited as a requirement for rebutting deference under *Chevron*.

Petitioner refers to the Ninth Circuit's various citations out of context and fails to note that the *National Fuel Gas* standard cited in the Ninth Circuit opinion is immediately preceded by the Ninth Circuit's acknowledgement that "self-interest alone gives rise to no automatic rebuttal of deference" (quoting the D.C. Circuit in *Independent Petroleum Association of America v. DeWitt*, 279 F.3d 1036, 1040

(D.C. Cir. 1987)). Pet. App. 24. This is a clear recognition by the Ninth Circuit that agency self-interest by itself does not trigger a rebuttal of deference. There is therefore no conflict between the Ninth Circuit and the D.C. Circuit on this point, as Petitioner asserts. Pet. App. 16.

B. The Ninth Circuit's Holding Does Not Conflict with This Court's Decision in *Chevron*.

In a further attempt to secure the review of this Court, Petitioner mischaracterizes the Ninth Circuit's opinion, and its acknowledgement of the D.C. Circuit's holdings on the matter of agency self-interest, by arguing that the Ninth Circuit's holding "will erode, if not overrule" this Court's decision in *Chevron*. Pet. App. 17. Petitioner expounds at great length over the D.C. Circuit cases on agency self-interest, Pet. App. 13-18, cited by the Ninth Circuit in one paragraph. Pet. App. 24. Petitioner suggests that the Ninth Circuit's decision will "throw the [sugar] industry into chaos" and "threatens to bring uncertainty and increased litigation challenging agency decisions." Pet. App. 30 As is evident from a review of the Ninth Circuit opinion, the one-paragraph discussion of the USDA's self-interest in this case is mere *dicta* that does not threaten agency decision making and does not warrant review by this Court.

In fact, the Ninth Circuit's holding was based on a straightforward application of *Chevron*. The Ninth Circuit determined at the outset of its opinion that (1) the term at issue, "processor," was unambiguous and used in a manner consistent with its natural and ordinary meaning, and (2) the USDA's interpretation of this term not only conflicted with the ordinary meaning of the word but also conflicted with the USDA's own regulatory definition of the term. Pet. App. 21-22. As a result, the Ninth Circuit determined that the USDA's interpretation was not entitled to deference and reversed the District Court's decision. Pet. App. 4. This decision is consistent with the Act and this Court's holdings in *Chevron*, provides all sugar beet processors with certainty and predictability in the correct interpretation and application of the Act, and presents no threat to agency decision making.

CONCLUSION

For the reasons stated above, the petition for certiorari should be denied.

Respectfully submitted,

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